

**COMMITTEE ON SUPERIOR COURT
DRAFT MINUTES**

Friday, November 7, 2008
Teleconference Meeting
State Courts Building
12:30 p.m. to 1:00 p.m.

MEMBERS PRESENT:

Honorable James A. Soto	Honorable David Mackey
Honorable Eddward Ballinger	Honorable Margaret Maxwell
Honorable James E. Chavez	Honorable Stephen McCarville
Honorable Norman Davis	Honorable Colleen McNally
Honorable Andrew Gould	Honorable Fred Newton
Honorable Sue Hall	Mr. Paul O'Connell
Honorable Cathy Holt	Honorable Stephen Villarreal
Ms. Karen Westover, proxy for Marcus Reinkensmeyer	Honorable Kenneth Lee

MEMBERS ABSENT:

Honorable Robert Duber II	Honorable Bethany Hicks
Honorable Patricia Escher	Honorable Michael Jeanes
Honorable Richard S. Fields	Ms. JoJene Mills
Honorable George Foster	Honorable Dale Nielson
Honorable Charles Harrington	Mr. David Sanders

PRESENTERS/GUESTS:

Ms. Linda Grau, AOC	Ms. Nancy Swetnam, AOC
Ms. Nina Preston, AOC	Ms. Lisa Price, Public
Ms. Theresa Barrett, AOC	Ms. Candy Wheeler-Ruby, Public

STAFF:

Ms. Kay Radwanski	Ms. Tama Reily
-------------------	----------------

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 7, 2008, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, chair, at 12:33 p.m. The meeting was conducted telephonically.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Proposed Amendments to Arizona Code of Judicial Administration (ACJA) § 7-202: Fiduciaries

Linda Grau, AOC Certification & Licensing Division (CLD), re-addressed the committee regarding the proposed amendments to ACJA § 7-202: Fiduciaries. This proposal was presented to the committee at the September 26, 2008, meeting, at which time the committee tabled the issue to have additional time to review it.

Ms. Grau explained that since the committee's September review of the proposal, the board went back and requested that alternative proposed language be submitted in order to address some of this committee's questions. In particular, CLD sought input on the question about restricting or prohibiting the ability of fiduciaries to delegate non-informed consent, or non-contractual agreement related activities. The matters were addressed by the Fiduciary Board at its October meeting, and the board adopted alternative provisions. The proposed changes include codification of the eligibility requirement; elimination of a prequalification, core competency exam process; additional clarification of the proposed optional trainee provision, and a definition of *active and direct supervision* with regard to the certified fiduciary's responsibility when the fiduciary is supervising trainees. Ms. Grau concluded her presentation with a request for a motion from COSC to recommend that the Arizona Judicial Council adopt the proposed amendments.

The committee then heard comments from two members of the public who are fiduciaries. (See Public Comments section.) Following their statements, Ms. Grau responded that the reference made to 7-201(H)(6)(k)(13), relating to the ability to delegate tasks was a misinterpretation of that subsection. She explained that it is a section used by the board when stating grounds for formal discipline. She added that there is currently nothing in the code of conduct that says what tasks can or cannot be delegated. What the proposed amendments are offering is a limitation that provides that the certified fiduciary alone can make those informed consent and contractual agreement-related decisions.

Committee Comments/Concerns:

In making a motion to oppose amendment of ACJA § 7-202, Judge Gould said he believed that the current code is adequate as written. Fiduciaries are sufficiently responsible and accountable for any misconduct that occurs, whether by themselves or by someone under their supervision. He said the proposed amendment would make it more difficult to recruit fiduciaries, particularly in rural counties, and simply make it more difficult for the fiduciaries to run their offices and use their discretion. Judge Chavez seconded the motion, and there was no further discussion.

MOTION: To oppose proposed amendments to ACJA § 7-202:
Fiduciaries. Motion seconded. Approved 13-2-0
COSC-08-020

B. 2009 Meeting Dates

Judge Soto announced the proposed meeting dates for 2009. The dates are:

Friday, February 27, 2009

Friday, May 22, 2009

Friday, September 25, 2009

Friday, November 6, 2009

There was some discussion by committee members that May 15, 2009, might work better than May 22, because of the Memorial Day holiday. Committee staff was directed to look into the possibility of rescheduling the meeting to May 15, 2009. The consensus was that no formal action was needed to approve the dates.

III. OTHER BUSINESS

Good of the Order/Call to the Public

Public Comments:

Lisa Price, president of the Arizona Fiduciaries Association and a private fiduciary, stated that changes to ACJA 7-202 are unnecessary because they are already addressed in the current administrative code sections dealing with fiduciaries. She provided an example, saying that one of the changes being proposed is related to the ability of a fiduciary to delegate tasks to someone that the fiduciary knows does not have the qualifications to perform the task. That is addressed in ACJA § 7-201(H)(6)(k)(13), which specifically states this. Additionally, the issue of informed consent is provided in ACJA § 7-202(J)(3), the code of conduct for fiduciaries. It also states the fiduciary alone is ultimately responsible for the decisions made on behalf of a ward or protected person. She said the proposal being presented also makes a statement that is a misrepresentation, stating “the fiduciaries have opposed this because designated principals do not believe they should be responsible for the actions of their staff.” The concern they have voiced to the Fiduciary Board is that when the staff is certified and a complaint is filed, it is only the designated principal who is being brought up on any disciplinary action, not also the certified fiduciary who actually committed the wrongdoing.

Candy Wheeler-Ruby, a public fiduciary and member of the Arizona Fiduciary Board, stated that she concurred with Ms. Price’s statements. She also expressed the belief that if she is responsible for and can be held accountable for what occurs in her office and with her clients, then she should be able to hire persons that she feels are qualified to do the tasks for which she hires them.

Member Comments:

Judge Newton informed the committee that this would be his last meeting, as his committee term is expiring and he plans to retire. He was thanked for his ten years of service to the committee.

Next Meeting

Friday, February 27, 2009

10:00 a.m. – 3:00 p.m.

Conference Room 345 A/B

Arizona State Courts Building

1501 W. Washington

Phoenix, AZ 85007

The meeting was adjourned at 12:48 p.m.